

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Peter Schappacher,)	
)	
Plaintiff,)	Case No. 1:04-CV-817
)	
vs.)	
)	
)	
Richard Mizer, M.D.,)	
<u>et al.</u> ,)	
)	
Defendant.)	

O R D E R

This matter is before the Court on the United States of America's motion to substitute United States as a proper party and motion as substituted party to dismiss (Doc. No. 8). For the reasons set forth below, the United States' motion is well-taken and is **GRANTED**.

On September 22, 2004, Leo and Mariangela Schappacher filed a medical malpractice lawsuit on behalf of their minor son, Plaintiff Peter Schappacher, against Dr. Richard Mizer, the Fayette County Memorial Hospital, and several John Doe defendants in the Highland County, Ohio Court of Common Pleas. On December 6, 2004, the United States removed the case to federal court pursuant to 28 U.S.C. § 2679(d)(2) on the grounds that the

Fayette County Memorial Hospital is a "community health center" and Dr. Mizer is deemed to be an employee of the United States Public Health Service pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233.

Having removed the case to federal court, the United States moves to be substituted as the proper defendant because a suit against a federal employee in the scope of his employment is deemed to be a suit against the United States. Once substituted as the defendant, the United States moves to dismiss the case on the grounds that the Federal Tort Claims Act ("FTCA") is the exclusive remedy for medical malpractice suits against the United States and Plaintiff failed to exhaust the FTCA's administrative remedies prior to filing this lawsuit. Plaintiff does not dispute of any of these contentions.

Upon review of the motion and the applicable law, the Court finds that it is correct in all respects. Compare Miller v. United States, No. 99-3998, 2000 WL 1140726 (6th Cir. Aug. 7, 2000) (same facts, affirming district court's substitution of United States as defendant and dismissal of complaint for failure to exhaust administrative remedies).

Accordingly, the United States' motion to be substituted as the proper defendant is well-taken and is **GRANTED**. Additionally, the United States' motion to dismiss for failure to

exhaust administrative remedies is well-taken and is **GRANTED**.

The complaint is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED

Date April 18, 2005

s/Sandra S. Beckwith
Sandra S. Beckwith, Chief Judge
United States District Court